

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re Application of

KINGSTOWN PARTNERS MASTER  
LTD,

Petitioner, for an Order Pursuant to 28  
U.S.C. § 1782 to Conduct Discovery for  
Use in a Foreign Proceeding.

Case No. 21-\_\_\_\_\_

**DECLARATION OF LORI MARKS-ESTERMAN IN SUPPORT OF PETITIONER’S  
APPLICATION FOR AN ORDER OF JUDICIAL ASSISTANCE  
PURSUANT TO 28 U.S.C. § 1782**

I, LORI MARKS-ESTERMAN, hereby declare under penalty of perjury under 28 U.S.C. § 1746 that the following is true and correct:

1. I am an attorney licensed to practice law in the State of New York. I am a partner with the law firm Olshan Frome Wolosky LLP, counsel to Kingstown Partners Master Ltd, (“**Petitioner**”) in the above-captioned matter. I make this declaration in support of Petitioner’s Application for an Order of Judicial Assistance pursuant to 28 U.S.C. § 1782 (the “**Application**”).

2. Petitioner brings this Application pursuant to 28 U.S.C § 1782 to obtain limited discovery from four targets located in this district – (i) Blackstone Inc. (“**Blackstone**”), (ii) MVB Management, LLC (“**MVB**”); (iii) CC Capital Partners, LLC (“**CC Capital Partners**”); and (iv) CC Capital Management LLC (“**CCCM**”) (together, “**Respondents**”) - for use in an appraisal proceeding pending in the Cayman Islands (the “**Appraisal Proceeding**”) concerning FGL Holdings (“**FGL**” or the “**Company**”).

3. As described more fully in the accompanying declaration of Mr. Guy Dilliway-Parry, sworn to on August 31, 2021 (the “**Dilliway-Parry Declaration**”), a Cayman legal practitioner, Petitioner and its affiliated funds (the “**Dissenters**”) are former shareholders of FGL and parties to the Appraisal Proceeding.

4. In the Appraisal Proceeding, the Dissenters seek a judicial determination of the fair value of the FGL shares they owned before FGL's stock was delisted from the New York Stock Exchange going-private merger (the “**Merger**”), which closed on June 1, 2020.

5. As discussed in detail within the Dilliway-Parry Declaration, and as described in great detail in the Definitive Proxy Statement filed by the Company with the SEC on or about April 27, 2020 (the “**Proxy**”), Blackstone (by and through a number of its subsidiaries and affiliates), MVB, CC Capital Partners and CCCM were each heavily involved in the process leading up to the Merger that is the subject of the Appraisal Proceeding, and all very likely possesses documents and communications that will be of importance in the Appraisal Proceeding.

6. As set forth herein, Blackstone, CC Capital Partners, CCCM and MVB each maintain their principal places of business within the Southern District of New York.

7. As further set forth herein, Blackstone is the parent company and/or beneficial owner of each of the Blackstone entities that has relevant documents and information relating to the Merger. Blackstone is therefore the proper Section 1782 target, as it has custody and control over the documents held by these entities. *See* Petitioner’s Memorandum of Law in Support of the Application for an Order of Judicial Assistance Pursuant to 28 U.S.C. § 1782, dated August 31, 2021, n. 4, pp. 12-13.

**A. Blackstone**

8. Blackstone is a global investment firm that maintains its principal place of business in New York City at 345 Park Avenue, New York, New York 10154.<sup>1</sup>

9. Through certain of its subsidiaries and affiliates, Blackstone has served as the Company's investment manager since 2017, through which Blackstone has had discretionary authority to manage the investments and reinvestments of the Company's funds and assets. Blackstone also has been a major shareholder of the Company, collectively owning approximately 20.4% of FGL's stock before the Merger, and was also a prospective purchaser of the Company in the months leading up to the Merger.

10. Based on publicly-available documents, the relevant Blackstone entities are:<sup>2</sup>

- **Blackstone ISG-I Advisors L.L.C. ("BIS")**: BIS has served as FGL's investment manager since 2017, and pursuant to an Amended and Restated Investment Management contract signed the same day as the Merger, continues to serve in that role following the Merger.<sup>3</sup> BIS is listed as a Blackstone subsidiary within Exhibit 21.1 to Blackstone's 2020 Form 10-K.<sup>4</sup> Public records show that BIS is organized as a Delaware limited liability company, and that its principle place of business is 345 Park Avenue New York, New York 10154.<sup>5</sup>
- **Blackstone Tactical Opportunities Advisors L.L.C. ("Blackstone Tactical")**, a Blackstone investment company, that was the entity designated by Blackstone to receive securities pursuant to the Merger; and **Blackstone Tactical Opportunities LR Associates B (Cayman) Ltd.**, which served as managing member to CFS Holdings (Cayman) Manager L.L.C., the general partner of both CFS Holdings II (Cayman), L.P. and CFS Holdings (Cayman), L.P., two Blackstone affiliated funds which together held

<sup>1</sup> See The Blackstone Group, Inc., Form 10-K, filed on February 26, 2021, available at:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1393818/000119312521060361/d105584d10k.htm>

<sup>2</sup> FGL Holdings, Schedule 14A, filed on April 27, 2019, available at:

<https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

<sup>3</sup> *Id.* Other Agreements Executed Concurrently with the Execution and Delivery of the Merger Agreement Investment Management Agreements and Post-Closing Interests of Blackstone in FGL p. 158

<sup>4</sup> See The Blackstone Group, Inc., Form 10-K (Ex. 21.1), filed on February 26, 2021, available at:

<https://www.sec.gov/Archives/edgar/data/1393818/000119312521060361/d105584dex211.htm>

<sup>5</sup> See Form ADV, Uniform Application For Investment Adviser Registration And Report By Exempt Reporting Advisers, p. 2, SEC.gov, Filed on 6/17/2021 5:50:26 PM,

<https://reports.adviserinfo.sec.gov/reports/ADV/289550/PDF/289550.pdf>

17.6% of FGL's shares prior to the Merger.<sup>6</sup> Blackstone Tactical is listed as a Blackstone subsidiary within Exhibit 21.1 to Blackstone's 2020 Form 10-K.<sup>7</sup> Public records show that Blackstone Tactical is organized as a Delaware limited liability company, and that its principle place of business is "c/o the Blackstone Group, Inc., 345 Park Avenue New York, NY 10154."<sup>8</sup>

- **CFS Holdings (Cayman), L.P. ("CFS 1") and CFS Holdings II (Cayman), L.P. ("CFS 2"):** CFS1 and CFS2 are the Blackstone funds that held the 17.6% of FGL's shares prior to the Merger.<sup>9</sup> Public filings show that CFS 1 and CFS 2 are organized as Cayman Island Limited Partnerships and that their address is "c/o the Blackstone Group, Inc., 345 Park Avenue New York, NY 10154."<sup>10</sup>
- **GSO Capital Partners LP ("GSO"):** GSO was a Blackstone affiliate that owned 2.8% of FGL's common shares and all of its Series A Preferred shares.<sup>11</sup> GSO changed its name to Blackstone Alternative Credit Advisors LP ("BACA") on November 16, 2020.<sup>12</sup> BACA is listed as a Blackstone subsidiary in Blackstone's 2020 Form-10K.<sup>13</sup> Public filings list GSO's address as "c/o GSO Capital Partners LP, 345 Park Avenue New York, New York 10154."<sup>14</sup>

11. As set forth above, each of the above-listed Blackstone entities is a subsidiary of and/or controlled and beneficially owned by Blackstone. Further, each also maintains its principal place of business in this District.

<sup>6</sup> FGL Holdings, Schedule 14A, pp. 8, 195, filed on April 27, 2019, available at:

<https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

<sup>7</sup> See The Blackstone Group, Inc., Form 10-K (Ex. 21.1), filed on February 26, 2021, available at:

<https://www.sec.gov/Archives/edgar/data/1393818/000119312521060361/d105584dex211.htm>

<sup>8</sup> FGL Holdings, Schedule 14A, p. 195-6, n. 3, filed on April 27, 2019, available at:

<https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

<sup>9</sup> *Id.* at 8.

<sup>10</sup> CFS Holdings (Cayman), L.P., Company Information, SEC.gov,

<https://www.sec.gov/edgar/browse/?CIK=1724966>; CFS Holdings II (Cayman), L.P., Company Information, SEC.gov <https://www.sec.gov/edgar/browse/?CIK=0001724964>.

<sup>11</sup> FGL Holdings, Schedule 14A, p. 8, filed on April 27, 2019, available at:

<https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

<sup>12</sup> See Blackstone Alternative Credit Advisors LP, SEC.gov, <https://www.sec.gov/cgi-bin/browse-edgar?company=GSO+Capital+Partners+LP&match=&filenum=&State=&Country=&SIC=&myowner=exclude&action=getcompany>

<sup>13</sup> See The Blackstone Group, Inc., Form 10-K (Ex. 21.1), filed on February 26, 2021, available at:

<https://www.sec.gov/Archives/edgar/data/1393818/000119312521060361/d105584dex211.htm>

<sup>14</sup> FGL Holdings, Schedule 14A, p. 195-6, n. 3, filed on April 27, 2019, available at:

<https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

**B. CC Capital Partners**

12. CC Capital Partners is a private investment firm that founded in 2016 by Mr. Chinh E. Chu,<sup>15</sup> FGL's Chairman of the Board and Chairman of FGL's Special Committee for the Merger."<sup>16</sup> CC Capital Partners served as a "transaction advisor" to FGL's Special Committee of the board of directors concerning the Merger and received a \$3.75 million fee for its services.<sup>17</sup>

13. Public records show that CC Capital Partners is organized in Delaware and maintains its principal place of business in New York City at 200 Park Ave., 58th floor, New York, NY 10166.<sup>18</sup>

**C. CCCM**

14. CCCM is a shareholder in FGL and is controlled by Mr. Chu, who is its managing member. Employees of CCCM, including designates Mr. Douglas Newton and Richard DiBlasi, were appointed by the FGL Special Committee to act as advisors to the FGL Special Committee and to assist the FGL Special Committee regarding its review of the proposal received by FNF as well as other potential strategic alternatives available to FGL. *See* Dilliway-Parry Declaration ¶ 19.

15. Public records show that CCCM is organized in Delaware and maintains its principal place of business in New York City at 200 Park Ave., 58th floor, New York, NY 10166.<sup>19</sup>

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<sup>15</sup> CC Capital, <https://cc.capital/about>

<sup>16</sup> FGL Holdings, Schedule 14A, p. 41, filed on April 27, 2019, available at: <https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

<sup>17</sup> *Id.*

<sup>18</sup> CC Capital, <https://cc.capital/contact-us>

<sup>19</sup> CC Capital, <https://cc.capital/contact-us>

**D. MVB**

16. MVB is a company that has served as a sub-advisor to BIS, FGL's investment manager, since 2017.<sup>20</sup> MVB is 50% owned by William Foley (Chairman of the FNF board and Co-chairman of the Company's board before the Merger) and Chinh E. Chu (Co-chairman of the Company's Board of Directors before the Merger).<sup>21</sup>

17. MVB is organized as a Delaware limited liability company, and public information indicates that MVB maintains its principal place of business at 200 Park Avenue, 58th Floor, New York, New York 10166, which is also the address for the offices of CC Capital Management LLC.<sup>22</sup>

**E. Petitioner Seeks Discovery from Blackstone, CC Capital, and MVB**

18. Petitioner's proposed subpoenas seek narrowly tailored discovery from Respondents concerning (i) the fairness of the Merger price; (ii) the process to reach the Merger price; (iii) FGL's valuation, including documents concerning any forecasts of the Company's future performance; and (iv) the conflicts of interest detailed in the Proxy. As outlined in Dilliway-Parry Declaration, these issues will be of paramount concern to the Cayman Court in the Appraisal Proceeding. *See* Dilliway-Parry Declaration §§ I.C. & II.

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<sup>20</sup> FGL Holdings, Schedule 14A, p. 77, filed on April 27, 2019, available at: <https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

FGL Holdings, Form 8-K, p. 3, filed on November 30, 2017, available at: [www.sec.gov/Archives/edgar/data/1668428/000114420417061977/tv480509\\_8k.htm](https://www.sec.gov/Archives/edgar/data/1668428/000114420417061977/tv480509_8k.htm).

<sup>21</sup> FGL Holdings, Schedule 14A, p. 77, filed on April 27, 2019, available at: <https://www.sec.gov/Archives/edgar/data/1668428/000104746920002608/a2241487zdefm14a.htm>

<sup>22</sup> *See* Complaint ¶ 33, *City of Miami General Employees' and Sanitation Employees' Retirement Trust v. Foley*, No. 2020-0650-KSJM (Del. Ch.); *see* Dun & Bradstreet Form S-1 filed on June 27, 2020, available at: <https://www.sec.gov/Archives/edgar/data/0001799208/000104746920003675/a2241866zs-1a.htm>; MVB Securities, LLC SEC Report, available at: <https://sec.report/CIK/0001751878>.

19. Attached hereto as Exhibits 1 through 4 are true and correct copies of the proposed subpoenas that Petitioner seeks to serve on the Respondents in connection with the Appraisal Proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 31, 2021 at New York, New York.

/s/ Lori Marks-Esterman  
Lori Marks-Esterman